

1
2
3
4
5
6
7 UNITED STATES BANKRUPTCY COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 In re)
10) Bankruptcy Case
11) No.
12)
13 Debtor(s)) Chapter 11
14)
15 _____)

16 **ORDER ESTABLISHING PROCEDURES FOR DISCLOSURE**
17 **STATEMENT HEARING AND CONFIRMATION HEARING**

18 Unless otherwise ordered, the plan proponent shall comply
19 with the following procedures. Section A governs all disclosure
20 statements, regardless of form. For most cases involving
21 individuals or small businesses (as defined in 11 U.S.C. §
22 101(51C) and (51D)) ("Small Business"), Section B of this order
23 provides abbreviated procedures for hearings in which the plan
24 proponent seeks tentative approval of a disclosure statement and
25 has utilized either the court's Standard-Form Combined Plan and
26 Disclosure Statement (in individual and certain business cases)
27 (the "NDBC Plan/DS") or the national form of a small business plan
28 and disclosure statement (Official Form Nos. 25A and 25B)(in
either case, the "Form DS/Plan"). The NDBC Plan/DS and its
Instructions, as well as the national forms, are available on the
court's website (www.canb.uscourts.gov).

1 Section C sets forth procedures for hearings in more complex
2 chapter 11 cases in which the plan proponent is seeking final
3 approval of a separate disclosure statement in accordance with
4 Fed. R. Bankr. P. 3017. (Such plans and disclosure statements are
5 referred to as a "Traditional DS" or a "Traditional Plan.")

6 **I. DISCLOSURE STATEMENT**

7 **A. GENERAL PROCEDURES FOR ALL DISCLOSURE STATEMENT HEARINGS**

8 1. Upon filing a Traditional DS and a Traditional Plan or a
9 Form DS/Plan, the filer must forward to the court at the same time
10 a hard-copy version marked "Judge's Copy." The face of the
11 document should reflect the date and time of any scheduled hearing
12 for approval of the Traditional DS or for tentative approval of
13 the Form DS/Plan.

14 2. Disclosure statement hearings should not be scheduled on
15 the court's regular law and motion calendar. To schedule a
16 hearing for approval of a Traditional DS, or for tentative
17 approval of a Form DS, the proponent should contact Ms. Lorena
18 Parada at 415-268-2323 or Lorena_Parada@canb.uscourts.gov. A
19 court order is not necessary for scheduling a disclosure statement
20 hearing, notwithstanding Official Form No. 12.

21 3. **Three (3) business days prior to the hearing (and any**
22 **continued hearing), the plan proponent shall advise the law clerk**
23 **by e-mail (Peggy_Brister@canb.uscourts.gov) whether the proponent**
24 **intends to go forward with the hearing. Failure to make this 3-**
25 **day notification may result in a continuance of the hearing, or a**
26 **delay in obtaining court review and approval.**

1 B. PROCEDURES FOR HEARINGS ON FOR TENTATIVE APPROVAL OF
2 DISCLOSURE STATEMENT

3 1. Unless otherwise ordered by the court: (a) individual
4 debtors seeking tentative approval of a disclosure statement must
5 utilize the NDBC Plan/DS and follow the Instructions posted on the
6 court's website; and (b) Small Business debtors seeking tentative
7 approval of a disclosure statement under Fed. R. Bankr. P. 3017.1
8 must use the Official Form 25A, revised December 2011 and Official
9 Form 25B, revised December 2008. The court may permit some
10 businesses to utilize the NDBC Plan/DS (with modifications).

11 2. The plan proponent may set a hearing for tentative
12 approval of the Form DS/Plan on at least 14 days' notice (filed
13 electronically) and mailed to all non-ECF parties who have
14 appeared in the case and who have requested special notice.
15 Notice need not be served on all creditors. The Form DS/Plan
16 should be filed before or at the same time the notice of hearing
17 is filed.

18 3. After a hearing at which the court tentatively approves
19 the Form Plan/DS, the plan proponent should upload a form of order
20 that is consistent with the Order Tentatively Approving
21 Disclosures in Combined Plan and Disclosure Statement, Fixing Time
22 for Submitting Ballots and Filing Objections to Confirmation of
23 Plan and/or to Final Approval of Disclosure Statement and Setting
24 Hearing (available in Judge Montali's forms on the court's
25 website).

26 C. PROCEDURES FOR TRADITIONAL DS HEARINGS

27 1. In cases where a proponent is seeking a final approval of
28 a Traditional DS as adequate under 11 U.S.C. § 1125, the proponent

1 shall provide notice of the hearing to the debtor, creditors,
2 equity security holders, United States Trustee, Securities and
3 Exchange Commission and other parties in interest as provided in
4 Fed. R. Bankr. P. 3017(a) and B.L.R. 3017-1. The notice shall
5 contain the information required by Official Form No. 12 and shall
6 state that the deadline for the filing of objections is seven days
7 prior to the hearing. The Traditional Plan and the Traditional DS
8 shall be served, with the notice, only on the United States
9 Trustee and the persons mentioned in the second sentence of Fed.
10 R. Bankr. P. 3017(a). Proof of service of the foregoing documents
11 must be filed at least three (3) business days prior to the
12 hearing.

13 2. The plan proponent may establish that the disclosure
14 statement meets the applicable requirements of 11 U.S.C.
15 §§ 1125(a) and (b) by offer of proof, declaration or, if the court
16 so permits or requires, live testimony. **In all cases, the debtor**
17 **and a competent witness must be present.** Briefs are not required.

18 3. At the conclusion of the disclosure statement hearing,
19 counsel for the plan proponent shall be prepared to advise the
20 court of the amount of court time the confirmation hearing will
21 require. If a contested confirmation hearing is anticipated, the
22 court will set an evidentiary hearing and will establish
23 procedures for the filing of briefs, exchange and marking of
24 exhibits, disclosure of witnesses and discovery.

25 4. A proponent seeking a continuance of a disclosure
26 statement hearing should appear at the scheduled hearing to make
27 that request, as the hearing will have been noticed out to all
28

1 creditors. For that reason, the court will not grant advance
2 telephonic requests for continuances. Nonetheless, if a proponent
3 does not anticipate seeking court approval of the disclosure
4 statement at the hearing, the proponent should notify the court as
5 soon as possible.

6 5. The court will not approve a disclosure statement for a
7 plan which, on its face, does not conform to the requirements of
8 the Bankruptcy Code. Accordingly, counsel for the plan proponent
9 who attends the hearing must be familiar with the disclosure
10 statement, the plan, the debtor and chapter 11 of the Bankruptcy
11 Code. In particular, plans should not classify expenses of
12 administration (11 U.S.C. § 503(b)) or unsecured priority tax
13 claims (11 U.S.C. § 507(a)(8)) as those claims are to remain
14 unclassified and are to be treated under 11 U.S.C. § 1129(a)(9)(A)
15 and (C). Further, real property tax claims should normally be
16 classified as senior secured claims. Disclosure statements should
17 contain correct statements of the voting requirements of 11 U.S.C.
18 § 1126(c) with respect to impaired classes of claims and
19 interests. If the plan proponent desires to include a discussion
20 of the operation of 11 U.S.C. § 1129(b) as to non-accepting
21 impaired classes of claims, the court expects such a discussion to
22 be accurate, concise and clear.

23 6. Upon approval of the Traditional DS, the plan proponent
24 shall submit to the court a proposed Order Approving Disclosure
25 Statement and Fixing Time conforming to Official Form No. 13, with
26 any modifications required by the court.

1 by e-mail (Peggy_Brister@canb.uscourts.gov) whether the proponent
2 intends to go forward with the hearing.

3 6. Uncontested Hearings. If the plan has been accepted by
4 the requisite majorities and no objections to confirmation have
5 been filed, the plan proponent may establish that the plan meets
6 the applicable requirements of chapter 11 by offer of proof,
7 declaration or, if the court so permits or requires, live
8 testimony. **In all cases, a competent witness must be present.**

9 Unless covered by the proponent's presentation and confirmation
10 brief, the proponent can expect the court to inquire, inter alia,
11 as to the ability of the plan proponent to meet any Effective Date
12 funding requirements, the status of any unpaid trade debt, taxes
13 or other obligations which arose after the filing of the petition
14 (see 11 U.S.C. § 1129(a)(9)(A)), the continued accuracy of any
15 projections or liquidation analyses previously included in the
16 disclosure statement, and how those factors bear upon the
17 feasibility of the plan under 11 U.S.C. § 1129(a)(11) and the
18 chapter 7 equivalency requirements of 11 U.S.C. § 1129(a)(7).
19 Confirmation briefs are not required, but may be filed at least
20 three (3) days before the hearing (with copies served on the
21 United States Trustee, counsel for the Official Creditors'
22 Committee, or if no such committee has been appointed, the
23 creditors included on the list filed pursuant to Fed. R. Bankr. P.
24 1007(b), and any parties objecting to confirmation, with a hard-
25 copy version marked "Judge's Copy" submitted to chambers.)

26 7. Contested Hearings. In the event the plan proponent
27 receives an unanticipated objection to confirmation or an
28

1 unanticipated plan rejection by a class of impaired claimants, and
2 the proponent nevertheless intends to request confirmation, the
3 proponent will be expected by the court to make a good faith
4 effort to meet and confer with the objecting claimant (or the
5 claimant's counsel, if represented) prior to the confirmation
6 hearing to identify all disputed legal and factual issues and to
7 discuss the conduct of the confirmation hearing. The plan
8 proponent should advise the court concerning the existence of
9 unresolved disputes when notifying the court in accordance with
10 paragraph C(5). Unless scheduling procedures were previously
11 established at the disclosure statement hearing, the court will
12 determine at the confirmation hearing whether the hearing should
13 proceed with respect to the disputed matters, the undisputed
14 matters, neither or both. If necessary, the court will establish
15 appropriate scheduling procedures.

16 8. A proponent seeking a continuance of a confirmation
17 hearing should appear at the scheduled hearing to make that
18 request, as the hearing will have been noticed out to all
19 creditors. For that reason, the court will not grant advance
20 telephonic requests for continuances. Nonetheless, if a proponent
21 does not anticipate seeking confirmation at the hearing, it should
22 notify the court as soon as possible.

23 9. **Final Decree.** The plan proponent should comply with
24 B.L.R. 3022-1. At the confirmation hearing, the proponent of the
25 plan shall advise the court when the proponent anticipates that
26 the plan will be substantially consummated and all post-
27 confirmation activity completed. The court may set deadlines for
28

1 filing reports pursuant to Fed. R. Bankr. P. 3022, filing an
2 application for a final decree pursuant to Fed. R. Bankr. P. 3022
3 and B.L.R. 3022-1, and closing the case.

4 The court may schedule a post-confirmation status conference
5 at the confirmation hearing. That conference will normally be set
6 approximately six (6) months after confirmation. Counsel should
7 be prepared to include any such deadlines in the Order Confirming
8 the Plan. The debtor and counsel are reminded that United States
9 Trustee fees established in 28 U.S.C. § 1930 will be payable after
10 confirmation, until entry of a final decree. After the case has
11 been closed, a party seeking relief must move to have the case
12 reopened before or concurrent with filing its application for
13 relief.

14 **END OF ORDER**
15
16
17
18
19
20
21
22
23
24
25
26
27
28